

## § 136.41

made in error may be taken by any method authorized by law.

(b) For cost based payments previously issued under this subpart, if it is determined that actual costs fall significantly below the computed rate actually paid, the computed rate may be retrospectively adjusted. The recovery of overpayments made as a result of the adjusted rate may be taken by any method authorized by law.

### Subpart E—Preference in Employment

AUTHORITY: 25 U.S.C. 44, 45, 46 and 472; Pub. L. 83-568, 68 Stat 674, 42 U.S.C. 2003.

SOURCE: 64 FR 58321, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

#### § 136.41 Definitions.

For purposes of making appointments to vacancies in all positions in the Indian Health Service, a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; or

(e) Until January 4, 1990, or until the Osage Tribe has formally organized, whichever comes first, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

#### § 136.42 Appointment actions.

(a) Preference will be afforded a person meeting any one of the definitions of § 136.41 whether the placement in the position involves initial appointment, reappointment, reinstatement, transfer, reassignment, promotion, or any other personnel action intended to fill a vacancy.

(b) Preference eligibles may be given a schedule A excepted appointment under 5 CFR 213.3116(b)(8). If the indi-

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viduals are within reach on a Civil Service Register, they may be given a competitive appointment.

[64 FR 58321, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

#### § 136.43 Application procedure for preference eligibility.

To be considered a preference eligible, the person must submit with the employment application a Bureau of Indian Affairs certification that the person is an Indian as defined by § 136.41 except that an employee of the Indian Health Service who has a certificate of preference eligibility on file in the Official Personnel Folder is not required to resubmit such proof but may instead include a statement on the application that proof of eligibility is on file in the Official Personnel Folder.

[64 FR 58319, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

### Subpart F—Abortions and Related Medical Services in Indian Health Service Facilities and Indian Health Service Programs

AUTHORITY: Sec. 1, 42 Stat. 208, (25 U.S.C. 13); sec. 1, Stat. 674, (42 U.S.C. 2001); sec. 3, 68 Stat. 674, (42 U.S.C. 2003).

SOURCE: 64 FR 58322, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

#### § 136.51 Applicability.

This subpart is applicable to the use of Federal funds in providing health services to Indians in accordance with the provisions of subparts A, B, and C of this part.

#### § 136.52 Definitions.

As used in this subpart:

*Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery at an Indian Health Service or tribally run facility, or by the state in which he or she practices.

#### § 136.53 General rule.

Federal funds may not be used to pay for or otherwise provide for abortions

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in the programs described in §136.51, except under the circumstances described in §136.54.

[64 FR 58322, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

### § 136.54 Life of the mother would be endangered.

Federal funds are available for an abortion when a physician has found and so certified in writing to the appropriate tribal or other contracting organization, or Service Unit or Area Director, that "on the basis of my professional judgment the life of the mother would be endangered if the fetus were carried to term." The certification must contain the name and address of the patient.

### § 136.55 Drugs and devices and termination of ectopic pregnancies.

Federal funds are available for drugs or devices to prevent implantation of the fertilized ovum, and for medical procedures necessary for the termination of an ectopic pregnancy.

### § 136.56 Recordkeeping requirements.

Documents required by §136.54 must be maintained for three years pursuant to the retention and custodial requirements for records at 45 CFR part 74, subpart C.

[64 FR 58322, Oct. 28, 1999. Redesignated and amended at 67 FR 35342, May 17, 2002]

### § 136.57 Confidentiality.

Information which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent, except as may be necessary for the health of the individual or as may be necessary for the Secretary to monitor Indian Health Service program activities. In any event, any disclosure shall be subject to appropriate safeguards which will minimize the likelihood of disclosures of personal information in identifiable form.

## Subpart G—Residual Status

### § 136.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort for persons defined

as eligible for contract health services under the regulations in this part, notwithstanding any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c) of this section, or

(2) The Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) The Indian would be eligible for alternate resources under State or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) *Alternate resources* means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under titles XVIII or XIX of the Social Security Act (*i.e.*, Medicare, Medicaid), State or local health care programs, and private insurance.

[64 FR 58322, Oct. 28, 1999]

## Subpart H—Grants for Development, Construction, and Operation of Facilities and Services

AUTHORITY: Secs. 104, 107, 25 U.S.C. 450h(b), 450k; Sec. 3, Pub. L. 83-568, 42 U.S.C. 2003.

SOURCE: 40 FR 53143, Nov. 14, 1975, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

### § 136.101 Applicability.

The regulations of this subpart are applicable to grants awarded pursuant to section 104(b) of Pub. L. 93-638, 25 U.S.C. 450h(b) for (a) projects for development including feasibility studies, construction, operation, provision, or maintenance of services and facilities provided to Indians and, (b) for projects for planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to